

STRICTLY CONFIDENTIAL

REPORT OF INVESTIGATION AND FINDINGS

Allegations of Violation of the University of California Policy on Sexual Harassment and Sexual Violence

Respondent: Howard D'abrer
Date of Incident: September 2015
Investigator: Paula Raffaelli, Complaint Resolution Officer (CRO), OPHD
Date of Report: December 16, 2015
Finding: Violation of UC Policy on Sexual Harassment and Sexual Violence

I. Reported Behavior and Procedural Background

On September 13, 2015, [REDACTED] ("Witness One"),¹ a UC Berkeley [REDACTED] and member of the [REDACTED], reported to [REDACTED] that he had been receiving sexually harassing emails from UC Berkeley adjunct professor Howard D'abrer ("Respondent"). Witness One was a [REDACTED] in Respondent's Statistics [REDACTED] class. [REDACTED] notified the Dean of Mathematical and Physical Sciences [REDACTED] who forwarded the information to the Office for the Prevention of Harassment and Discrimination ("OPHD") on September 14, 2015.²

II. Interim Remedies

Effective September 14, 2015, the Department of Statistics, and Labor Relations, placed Respondent on Administrative Leave, informing him it was "due to your recent activity in the department, including threats of self-harm, contacting [REDACTED] with information regarding your personal life, and disruption of the staff and faculty during their working hours." The Administrative Leave remains in effect until December 31, 2015. As a condition of the leave, Respondent was instructed not to attend the Statistics [REDACTED] course class or have contact

¹ [REDACTED] stated that [REDACTED] did not wish to be named as a Complainant in this matter. However, OPHD determined that a formal investigation was necessary to determine if Respondent violated the University of California Policy on Sexual Harassment and Sexual Violence. Accordingly, [REDACTED] is labeled as "Witness One" for the purposes of this report.

² In a related matter, on September 9, 2015, [REDACTED], [REDACTED] for the Department of Statistics, reported to OPHD that Respondent was "showing special interest" in a [REDACTED], [REDACTED]. In particular, [REDACTED] reported that Respondent had bought [REDACTED] a ticket for [REDACTED] to visit him in Sydney, Australia. Student advisor [REDACTED] followed up with [REDACTED], who said he had no discomfort himself but only was concerned for Respondent's well-being. In light of the fact that [REDACTED] expressed no concerns of *unwelcome* behavior, OPHD did not reach out to him. However, I discuss this issue in the report as part of the overall totality of the circumstances.

with any [REDACTED]. A new instructor replaced Respondent in his Stats [REDACTED] class, and Witness One [REDACTED].

III. Jurisdiction

The Office for the Prevention of Harassment and Discrimination has campus-wide responsibility for responding to sex discrimination complaints and implementation of the University of California Policy on Sexual Harassment and Sexual Violence, which includes the investigation and resolution of complaints received against faculty, staff and students.

IV. Applicable Policy

The interim University of California Policy on Sexual Harassment and Sexual Violence (“the Policy”), effective June 17, 2015, applies, as it was the Policy in effect at the time of the incident(s).

The Policy defines sexual harassment as:

unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person’s employment or education or interferes with a person’s work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

...

To determine whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Evidence is weighed by a preponderance standard, or “more likely than not.”

V. Summary of Findings

Based upon a preponderance of the evidence, Respondent did violate the UC Policy on Sexual Harassment and Sexual Violence. A detailed discussion of the findings is included in Section VII.

VI. The Investigation

A. Statements

1. Witness One's Statement

I met with Witness One and [REDACTED], on September 15, 2015. Witness One explained that he first introduced himself to Respondent on September 4, 2015, when he asked to be placed on the [REDACTED] for [REDACTED] for the Stat [REDACTED] course. Subsequently, a dinner was scheduled

with Respondent and several [REDACTED]. When that dinner was cancelled, Witness One went to Respondent's office. Witness One reported that while he was talking to Respondent in his office, Respondent talked about suicide, orgies, drugs, money, and his childhood. Specifically, Witness One said that Respondent said, "I have this thing over there, if need be I can kill myself," as he pointed to what Witness One believed to be a syringe. Witness One said he did not see the syringe. Respondent also said, "Did I ever tell you this story about how I got into an orgy." He proceeded to say he had taken a poll of his students and 80-90% of them said they would participate in an orgy. Witness One also reported that during this conversation, Respondent told him that there was a group of former students who were upset with him, and that they had a plan to come and "shoot up the class." He told Witness One that the FBI was aware. Witness One reported that he thought "this is a nutty professor" and would have just ignored it, but for the subsequent emails Respondent sent him, which are discussed below.

On September 8, 2015, Witness One went to a rescheduled dinner with Respondent, some friends of Respondent, [REDACTED] (a [REDACTED] in Respondent's course), and three other [REDACTED] at a Thai restaurant. Witness One explained that Respondent was talking to him a lot, and suggested, "We should go to the big islands together," referring to Hawaii. Witness One added that at one point Respondent offered to trade shirts with him. At the dinner, Witness One learned that Respondent had previously taken [REDACTED] to Sydney and gave him headphones.

The following day, Witness One sent Respondent an email thanking him for dinner. Respondent replied on September 9, 2015 from the email address [REDACTED]@berkeley.edu with the following:

I should get to know you [Witness One] and explore the daring dark [REDACTED] side of you. Bring me a shirt from your wardrobe for the Indonesian tailor – fitted \$4 shirt to be made. I have ordered the Bose headphones for you which you can listen to on the beach in Hawaii (not hearing the waves at all) while I whisper sweet nothings in your ear and sip my Mai Tai's. How does that sound for a dirty smoke filled weekend of unadulterated guilty pleasure and sins? Confessions with Pope Francis on Tuesday after we return. Your Mom would Not approve at all. He he! Howard.

After Witness One replied later that evening, "I cannot accept the headset at all! Sounds like too wild of a time!," Respondent replied:

Sure you will accept the Bose. How else can all the crazy Hawaiian stuff follow. Read the fine print if you are not stoned. BTW: I resigned from UC today. The head is trying to convince me to say[sic] until semester's end. Who knows: I may put it to the vote in class. Perhaps I will be as popular as a pork chop in a Muslim mosque!"

Witness One explained that [REDACTED] was concerned about Respondent's discussion of former students "shooting up the class." On September 10, 2015, Respondent wrote to Witness One to note that [REDACTED]. Respondent again discussed the Bose headphones he offered to Witness One, writing, "You missed out on picking up your Bose Noise cancelling headphones that you won in a bet with me." Witness One again declined the offer and expressed concern about the former student [REDACTED]. Specifically, Witness One wrote back:

Hey Professor! Yea to be honest I'm a bit freaked out about that former student of yours [REDACTED] As I said I feel I cannot accept such a gift it is too generous!"

Respondent replied:

[REDACTED] is a lovely cool dude. He would not like lovely[sic]. All the girls and some boys too wanted to hug and kiss him. He is a really great guy. I know him extremely well. Almost too well if you know what I mean! He will help you a lot. I don't know why you are freaked out. It maybe part of your dark secrets file. YOU MUST ACCEPT THE BOSE. Otherwise I will send you to [REDACTED] for mind retraining and a new Stat [REDACTED] lecture section to boot.

A few more emails are exchanged, wherein Respondent tells Witness One that he may not return to Berkeley and suggests that Witness One come with [REDACTED] to Sydney. He adds:

[Witness One]: I AM NOT KIDDING. FIRST CLASS RETURN TO SYDNEY USING MY UNITED POINTS. Cost of ticket if purchased: about \$20,000. I will insist you come, or else it is a [REDACTED] in Stat [REDACTED] and I will tell the [REDACTED] and the [REDACTED] about your after hours prowls and nefarious nocturnal orgies. So there!

Witness One reported that when he received this email threatening him with a lower grade if he did not accept Respondent's offer, he was concerned and thought it was time to tell someone.

On September 11, 2015, Witness One was added to an in-progress email thread between Respondent and two of his [REDACTED], [REDACTED] and [REDACTED], wherein Respondent discussed leaving UC Berkeley. In that thread, Respondent emailed [REDACTED] and [REDACTED], "I will insist that both of you and [REDACTED] accept a R/T first class trip on United to anywhere in the world. [REDACTED] to China and you and [REDACTED] maybe to London or Vienna or Thailand. All expenses paid by me of course." After adding Witness One to the thread, Respondent wrote:

[Witness One]: Please read all the emails as you scroll down. Please send ideas for my last speech to Stat [REDACTED] And I assume that you will also accept ALL of the offers made to [REDACTED] and [REDACTED] as well as accept the Bose headphones which I will give you on Tuesday next week.

After Witness One refused again, Respondent sent two more emails insisting that he accept the offers.

On September 14, 2015, Respondent emailed Witness One: "Hey [Witness One]. Please see me today as I have a gift for you. I do not wish to embarrass you at tomorrow's [REDACTED]." He sent two more emails asking Witness One to "email me ASAP" and including him on a group email inviting him and some [REDACTED] to a "last meal."

Finally, on September 15 at 6:09am, Respondent emailed Witness One, [REDACTED], and [REDACTED] the following, using the email address [REDACTED]:

ALL: Strictly off the record of course. Hi [Witness One]. Please respond to this. You have been very silent indeed. What's up? The Stats chair will come to the lecture today. If I was a student I would boo when he enters the room. I would stand up and turn my back to him when he speaks. I would pepper him with the nastiest questions and not hesitate to call him a fucking dickhead and imbecile. Then I would tell him that the entire class is dropping Stat █ before the deadline next Friday. You can always not carry this threat out as he will not know. You can tell him you will protest his office every hour until he rescinds his ban on me. Finally you can walk out en masse as he finishes his question and answer session. Of course this is off the record and I never emailed you at all. As it is █ they cannot trace this email. Your ex-Professor soon to be exiled from the students I love. Howard.

At the end of the meeting with me, Witness One stated that he did not want to continue in the class with Respondent and asked to be moved to the other Stat █ lecture being taught by a different professor. Subsequently, because Respondent was placed on administrative leave and replaced, Witness One explained that he would stay in his original lecture.

2. Respondent's Statement

I, along with Labor Relations, initially scheduled three in-person meetings with Respondent, on October 2, November 12, and November 17, 2015. Respondent did not come to any of those meetings. I subsequently offered to interview him via Skype, but Respondent indicated he did not have access to Skype and that he was ill. Accordingly, I submitted questions to him over email on December 1, 2015, and gave him four business days to respond. Respondent indicated he would not be able to fully respond in writing by that deadline. Ultimately, we were able to connect via a scheduled phone call on Friday, December 4, 2015. During the phone call, Respondent read from an 11-page letter he created to respond to the questions I sent to him via email. He eventually emailed that letter to me on December 10, 2015. I have attached to this report my emailed questions [Attachment 2] and Respondent's written responses [Attachment 3].

Respondent began by stating that his █ had written a letter on his behalf (though he has not as of the date of this report submitted any █ letter to OPHD). According to Respondent, his █ stated that Respondent is █ due to the allegations against him.

According to Respondent, his █ has indicated that Respondent is █, and as a result he is █. Accordingly, he stated that he would not have a reason to proposition someone sexually.

Respondent also indicated that he had numerous letters from colleagues, to whom he has also offered flights using his miles. Respondent explained that he made these offers expecting nothing in return, and stated that his miles would otherwise expire. These letters are attached to this report as Attachment 4.

Respondent then discussed at length another matter involving an allegation of a cheating ring. Respondent suspected a number of students were cheating, and reported them. They were ultimately found to be not responsible. Respondent claimed that he then received phone threats that he should not teach or they would kill him or his students. He said he "may have mentioned

this to [Witness One]" and said that in hindsight he should have handled it differently, but at the time he was "glad to be alive."

With respect to the offers of airline tickets, Respondent stated that he told his class he would offer a "grand prize" to his students: the top student and the "most improved" student would receive round trip tickets to Australia. He emphasized that these tickets had no strings attached.

Respondent discussed his meeting with Witness One at his office. He said during this meeting, they discussed how Witness One was [REDACTED]. Respondent said he told Witness One that he typically won't give a [REDACTED]. He told Witness One that if he got a [REDACTED]

[REDACTED]. He told Witness One he would put it in writing. He added that Witness One told him that "late at night some of the boys went to the bars for a drink." He explained that this was the genesis for the email he wrote September 10, which stated: "[Witness One]: I AM NOT KIDDING. FIRST CLASS RETURN TO SYDNEY USING MY UNITED POINTS. Cost of ticket if purchased: about \$20,000. I will insist you come, or else it is a [REDACTED] in Stat [REDACTED] and I will tell the [REDACTED] and the [REDACTED] about your after hours prowls and nefarious nocturnal orgies. So there!"

Respondent acknowledged it was "clumsily written" and explained he writes his emails at 3am. He said he should have written: "We both agree that any student who tries and makes an effort will never end up with a [REDACTED] so this is an unlikely scenario." He strongly denied that he was threatening to give Witness One a lower grade if he did not accept the ticket. He said this was like a "hypothetical situation" like the one about lying on the beach in Hawaii (discussed below).

Respondent then discussed the Thai restaurant dinner. He noted there were four [REDACTED] present, [REDACTED], another [REDACTED], and a retired professor and his wife. He said that someone called Witness One [REDACTED] during this dinner, because he is small and is the [REDACTED] for the [REDACTED]. He also added that he offered to have Indonesian shirts made for everyone, not just for Witness One.

Regarding the "daring dark [REDACTED]" email, Respondent admitted to sending this email and acknowledged that it "look[ed] bad." For context, he explained that he had been discussing his own "dark secrets" with Witness One during the Thai dinner, and explained his fears are drowning and being alone – thus, his "worst nightmare is to be on a beach at night." He further explained that during the dinner, Witness One asked if he could be his close friend, know his dark secrets, and go to Hawaii with him. Respondent stated that he would not know, and then they talked about what it would have been like to go to Hawaii in 1969, when Respondent was not an instructor and Witness One was not his student. He added, "I told [Witness One] in order to gain my trust and reveal my dark inner secrets I would have to be drunk and loose lipped. And then maybe he would reveal his dark inner secrets to me." When asked if this was a sexual advance, Respondent replied, "Absolutely not." He again discussed how he is [REDACTED] and said people with [REDACTED] have no [REDACTED]. He stated that his "mistake" was not adding this context in the email he ultimately sent to Witness One.

³ According to Witness One's [REDACTED], he is [REDACTED]"

Regarding the email about [REDACTED] ("I know him extremely well. Almost too well if you know what I mean!"), Respondent explained that [REDACTED] visited him and his family in Sydney, and he described him as an "honorary nephew." He said that "I know you too well, if you know what I mean" is a phrase he uses to mean that he had [REDACTED] trust. He "could see it might be misinterpreted." He said that [REDACTED] came to Sydney using Respondent's airline miles, and that he is a good friend. He said they have a platonic relationship only.

Regarding the email informing Witness One he had a "gift" for him at the lecture, Respondent said the "gift" he was referring to was the Bose headphones. He said that "in retrospect," he should not have kept asking Witness One to accept the gift after it was clear he did not want them. He said he offered them to Witness One because they discussed how he could use them to block noise while he was studying in the library.

Regarding the email about protesting the Chair, Respondent stated that he is "really sorry [he] wrote [this] email." He would like to apologize to Chair [REDACTED]. He said he was under stress and glad to be alive at the time. He was upset that even though students were threatening him, *he* was the one regarded as a threat when he greeted staff in the Statistics Coffee Lounge.

I asked Respondent about an email forwarded to OPHD by [REDACTED], Academic Advisor in the [REDACTED]. On October 19, 2015, Respondent emailed [REDACTED] the following:

I really got along with those [REDACTED] and liked them so much that I even took some of them out to dinner. This, after only 5 lectures. [REDACTED] that I NEVER fail a student who tries and who sits the final exam. I also told them I never give D's. I urged them to keep in touch for help needed but was in fact (very foolishly in my view) not even allowed to contact them. A sad state of affairs for me when I have taught over 45,000 students over a period of 26 years. Imagine my surprise when one of the [REDACTED] (I think it was a [REDACTED] named [Witness One]) has brought some ridiculous sexual charges against me. Actually they are not sexual but fall under the sexual harassment umbrella. He will give me no choice but to ask a legal team to seek damages. They are likely to include [REDACTED] from UC Berkeley. He has irreparably damaged my academic reputation and gives me no choice in the matter. Very sad indeed, but there it is. Unless the charges are totally withdrawn my legal team will seek an [REDACTED] and financial damages. I am not supposed to warn anyone of this (not even Paula in the sexual harassment office) but Out of consideration for the student I am telling you this IN THE STRICTEST CONFIDENCE PLEASE ASSURE ME THAT WHAT I TELL YOU REMAINS PRIVATE.

Many thanks. I look forward to helping [REDACTED] in the Spring when I teach STAT [REDACTED].

Cheers

Howard

Respondent admitted to sending this email. He explained that he was in shock when he received the notice of allegations, and he “shouldn’t have sent the email.” He “very foolishly wrote that letter to the Director.” He explained that he did not want Witness One [REDACTED] and hoped to connect with him after he [REDACTED]. I explained to Respondent that he is to have absolutely no contact with Witness One.

When asked if he has offered gifts to [REDACTED] before, Respondent said he has. He has given away movie tickets, vouchers for restaurants or coffee when [REDACTED] have done well on their [REDACTED], and he gave a \$100 gift certificate to Chez Panisse to one [REDACTED] when he [REDACTED]. He replied, “None, whatsoever,” when asked if he’s ever had romantic relationships with [REDACTED]. He explained that he has learned a lesson to not put anything personal in emails or go to coffee with [REDACTED], unless other people are there.

B. Documentary Evidence

I reviewed the following pieces of documentary evidence, which are attached to this report:

1. Emails exchanged between Respondent and Witness One
2. My emailed questions to Respondent
3. Respondent’s response to my questions
4. Respondent’s submitted letters of support

VII. Factual Findings and Analysis

A. Standard of Evidence: Preponderance of the Evidence

Findings in this investigation report are based on a “preponderance of the evidence” standard. In other words, after reviewing all the evidence, including the relative credibility of the parties and their statements during interviews, whether it is more likely (or probable) than not that the conduct occurred as alleged. If the conduct did occur as alleged, then an analysis is completed to determine whether the conduct violated University policy. Please note: the report’s findings do not reach conclusions whether the alleged conduct violated state or federal laws, but instead address whether the University’s policies were violated.

B. Fact Finding

Respondent admitted to sending the emails to Witness One, to discussing orgies at an office meeting with him, and to discussing a trip to Hawaii with Witness One at a dinner with others present. Accordingly, it is more likely than not that Respondent engaged in this behavior.

C. Did the Alleged Behavior Violate the Policy?

According to the Policy, sexual harassment is “unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person’s employment or education or interferes with a person’s work or educational performance or creates an environment such that a

reasonable person would find the conduct intimidating, hostile, or offensive." I find that Respondent's behavior amounted to sexual harassment, and thus violated the Policy.

1. The conduct was unwelcome

Respondent sent Witness One numerous emails offering to buy him expensive gifts and international flights. Witness One continuously refused the gifts in his emails to Respondent, and he reported that he was concerned about receiving these emails. In particular, Witness One stated that he grew alarmed when Respondent told him he would get a [redacted] if he did not accept the offered gifts. He asked to be transferred to the other Stat [redacted] lecture so he would no longer have Respondent as his professor. Respondent claimed that Witness One was the one who suggested they go to Hawaii together, and that he is the one who asked Respondent to "put in writing" their conversation about his [redacted]. After reviewing the totality of the circumstances, I find Witness One's account of the events to be more likely than not what occurred, and find that this conduct was unwelcome.

2. The conduct was of a sexual nature

Respondent discussed "orgies" with Witness One in their office meeting. He further sent Witness One emails where he discussed "whisper[ing] sweet nothings in your ear" and "a dirty smoke filled weekend of unadulterated guilty pleasure and sins." In his September 10 email, he told Witness One he had to accept the flight to Sydney or he would receive a [redacted] and Respondent would "tell the [redacted] and the [redacted] about your after hours prowls and nefarious nocturnal orgies." These emails and conversations are objectively conduct of a sexual nature. In particular, they represent unwelcome sexual advances, and verbal conduct of a sexual nature.

In his written statement and in his telephone interview, Respondent insists on a non-sexual context to these messages. For example, he stated that the discussion of "orgies" was related to a statistical method he used in his class. He also stated that the email about the trip to Hawaii was a follow-up to a conversation he and Witness One had about a hypothetical trip to Hawaii in 1979. Even taking this to be true, these are inappropriate topics of discussion between a professor and an [redacted] and create a hostile learning environment. Respondent stated that he had no sexual intent in sending these messages to Witness One, relying on a [redacted] letter which allegedly explains that he is [redacted] due to his [redacted]. However, the impact of behavior is weighed more heavily than the intent under the Policy. Regardless of Respondent's intent, these messages are objectively conduct of a sexual nature.

3. The conduct explicitly and implicitly affected and interfered with Witness One's education. The conduct further created an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

Witness One explained that after meeting with Respondent in his office on September 7, 2015, he did not attend the following [redacted] as he was fearful of a potential shooter, based on what

Respondent told him. Witness One initially contacted Respondent to receive help [REDACTED] [REDACTED]. Though he was initially connected with a [REDACTED], he also then received numerous emails from Respondent with unwelcome sexual advances. The emails affected him enough that he wanted to transfer to a different [REDACTED], until it was confirmed that Respondent would no longer be [REDACTED]. Most significantly, in addition to unwelcome sexual advances, Respondent threatened Witness One with [REDACTED] if he did not accept the gifts Respondent was offering. Even accepting as true Respondent's claim that this was only to memorialize a conversation between him and Witness One about his [REDACTED], the impact of this email was to cause reasonable alarm to Witness One that he was being presented with a "quid pro quo" offer.

Respondent offered numerous letters of support from various friends and colleagues, and even a former graduate student, which described him offering free trips with his miles, with no strings attached. Again, even assuming the truth of this, it is inappropriate in his position of authority for Respondent to offer lavish gifts to [REDACTED]. Respondent was in a position of authority over Witness One, and had the ability to [REDACTED]. Witness One was concerned enough with the [REDACTED] threat that it prompted him to report the behavior. Again, even taking as true Respondent's statement that this was intended as a poorly worded summary of a previous in-person discussion about [REDACTED], the impact of this language was to condition Witness One's [REDACTED] on his acceptance of a free flight to Sydney. This is *per se* "quid pro quo" sexual harassment, and is particularly troubling given that it was preceded by numerous unwelcome emails of a sexual nature. Accordingly, Respondent's conduct explicitly interfered with Witness One's education, and created an intimidating, hostile, and offensive environment.

VIII. Conclusion

I evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged incidents occurred. The standard by which the evidence was weighed was "more likely than not." The evidence gathered supports the conclusion that Respondent more likely than not engaged in inappropriate conversations and sent multiple unwelcome emails of a sexual nature to Witness One. Therefore, it is determined that Respondent violated the University of California Policy on Sexual Harassment and Sexual Violence.

I am forwarding this report to the Vice Provost for the Faculty, Janet Broughton, Assistant Vice Provost, Academic Personnel Office, Heather Archer, Department of Statistics Chair [REDACTED] [REDACTED], and Director of Labor Relations Debra Harrington, for assessment as deemed appropriate.